

JAMES WHITE

IBLA 80-443

Decided July 3, 1980

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring abandoned and void four lode mining claims, AA-3765 through AA-37656.

Affirmed.

1. Federal Land Policy and Management Act of 1976:
Recordation of Mining Claims and Abandonment -- Mining
Claims: Abandonment -- Mining Claims: Location --
Mining Claims: Recordation

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b) and 3833.4, the owner of an unpatented mining claim located after Oct. 21, 1976, shall file within 90 days after the date of location in the proper BLM office a copy of the official record of the notice or certificate of location, or the claim must be deemed abandoned and void.

APPEARANCES: James White, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

James White appeals from a decision dated February 12, 1980, by the Alaska State Office, Bureau of Land Management (BLM), declaring appellant four lode mining claims abandoned and void. 1/

The claims were located on October 15, 1978. BLM received a copy of the notices of location on October 22, 1979. BLM thereupon declared the claims void, rejected the documents, and returned them to appellant. On February 12, 1980, appellant filed a timely appeal.

1/ The mining claims are all designated by the same name, J & J Mines.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of the location. It also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner and renders the claim void. Faith C. Hartman, 44 IBLA 310 (1979).

The implementing regulation, 43 CFR 3833.1-2(b), provides as follows:

The owner of an unpatented mining claim * * * located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location * * *.

43 CFR 3833.4(a) provides: "(a) The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void."

In effect, appellant argues that the law should not be applied because the "mine is lost in five feet of snow," the laws have been changed and the mine has "been here since 1958."

As to the Congressional authority to enact section 1744, see Topaz Beryllium Company, 479 F. Supp. 309 (D. Utah 1979). That case discusses the purpose of the statute. Appellant, as an owner of an unpatented mining claim located after October 21, 1976, failed to file a location notice with the BLM within 90 days after the date of location. The statute required that the claim be deemed abandoned and void. Beryl Rhodes, 46 IBLA 287 (1980).

Neither FLPMA nor the regulations provide any leeway in the application of the penalty for failure to file this information. William L. Rucinski, 42 IBLA 56 (1979). The fact that the mine is covered with snow does not alter the filing requirement, nor does appellant's residency in Alaska since 1958.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Joan B. Thompson
Administrative Judge

